



# MDE Recommends

## EXPULSIONS DUE TO WEAPONS, ARSON, AND CRIMINAL SEXUAL CONDUCT

The sections of the *Revised School Code* that address this issue are contained in the Michigan Compiled Laws under MCL 380.1311 and 380.1313. The section of the *Gun Free Schools Act of 1994* that governs this issue is contained in the United States Code under 20 USC §3511.

Pursuant to federal legislation enacted in 1994, local educational agencies cannot receive federal funds unless they have a policy requiring expulsion for at least one year if a student brings a firearm to school. The *Revised School Code* addresses weapon possession and other issues in section 380.1311. Subsection (2) of this provision states that if a student possesses a dangerous weapon in a weapon free school zone<sup>1</sup> (on school property and/or a vehicle used by a school to transport students to or from school property), or commits arson or criminal sexual conduct in a school building or on school grounds, the student must be expelled from school permanently, subject to possible reinstatement provided for in the law. There are certain exceptions that may not require a board to expel a student.

The term “dangerous weapon” means a firearm, dirk, dagger, stiletto, iron bar, knife with a blade over 3 inches in length, pocket knife opened by a mechanical device, and brass knuckles [MCL 380.1313(4)]. The definition of “firearm” in section 380.1311 refers to the definition of that term in the federal *Gun-Free Schools Act of 1994* which in turn refers to another section of federal law which defines “firearm” as:

- Any weapon (including a starter gun) which will or is designed or may readily be converted to expel a projectile by the action of an explosive;
- The frame or receiver of any such weapon;
- Any firearm muffler or firearm silencer; or
- Any destructive device.<sup>2</sup>

If a student is expelled pursuant to section 380.1311(2), the expelling school district must enter that fact on the student’s permanent record. Within 3 days of expelling a student an official of the school district must refer the student to the appropriate county department of social services or county community mental health agency. Notification of this referral must be given by the school district official to the expelled student if he or she is at least 18 years of age or is an emancipated minor, or to the student’s parent or legal guardian.

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<sup>1</sup>The term “weapon free school zone” is defined in MCL 750.237a. “Arson” means a felony violation of Chapter X of the Michigan Penal Code, sections 750.71 to 750.80 of the Michigan Compiled Laws. “Criminal sexual conduct” means a violation of sections 750.520b, 750.520c, 750.520d, 750.520e or 750.520g of the Michigan Compiled Laws.

<sup>2</sup>The Michigan Court of Appeals stated in November 1997 that absent a contrary statutory provision, a school board has the power to mandate permanent expulsion in its weapon policy for possession of a BB gun on school property. Davis v. Hillsdale Community School District, Docket No. 199236.



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## **Exceptions**

School boards are not required to expel a student if the student can establish in a clear and convincing manner at least one of the following:

- (1) The object or instrument possessed by the student was not possessed for use as a weapon, or for direct or indirect delivery to another person for use as a weapon.
- (2) The weapon was not knowingly possessed by the student.
- (3) The student did not know or have reason to know that the object or instrument possessed by the student constituted a dangerous weapon.
- (4) The weapon was possessed by the student at the suggestion, request or direction of, or with the express permission of school or police authorities.

## **Alternative Placement After Expulsion**

**Unless** the school district operates or participates in an alternative education program appropriate for a student expelled pursuant to section 380.1311(2) **and at the school district's discretion admits the student** to that program or a "strict discipline academy," the student is expelled from all Michigan public schools. The student cannot be enrolled unless reinstated pursuant to the provisions discussed below [MCL 380.1311(2)].

A program operated for expelled students must ensure that a student is physically separated at all times during the school day from the general pupil population. If the student is not placed in an alternative education program or a "strict discipline academy," the school district **may** provide or arrange for the intermediate school district to provide to the student appropriate instructional services at home. Homebound services are designed to help students who are unable to attend school to keep up with their studies [MCL 388.1709].

It is the responsibility of the parent or legal guardian to locate a suitable alternative education program and to enroll their child in a program during the expulsion. For further information regarding alternative education programs available in your area, contact your local or intermediate school district or the Office of Safe Schools at (517) 241-0726.

## **Petitioning for Reinstatement**

Although the law calls for the "permanent" expulsion of a student who possesses a dangerous weapon in a weapon-free school zone, commits arson or commits criminal sexual conduct in a school building or on school grounds, subsection (5) provides a process for petitioning for reinstatement to school. It is the responsibility of the petitioning person (a parent, legal guardian, or the expelled student if he or she is at least 18 years of age or is an emancipated minor), to prepare and submit the petition for reinstatement. The school board is not required to assist in the preparation of the petition. If a petition form is requested by a person wishing to be reinstated, the school board must make the petition form available.



# MDE Recommends

The local school board may include conditions in a petition for reinstatement. If the expelling school board denies a petition for reinstatement, the petitioner may petition another school board for reinstatement. The following timelines and procedures apply to reinstatement.

## Grade 5 or below

For a student who was enrolled in grade 5 or below at the time of the expulsion and who has been expelled for possessing a firearm or threatening another person with a dangerous weapon, the parent or legal guardian, or the student (if he or she is at least 18 years of age or an emancipated minor), may initiate a petition for reinstatement any time after 60 school days following the date of the expulsion. A student may be reinstated 90 school days following the date of expulsion.

If the student was expelled pursuant to subsection (2) for a reason other than possessing a firearm or threatening another person with a dangerous weapon, committing arson or criminal sexual conduct, a petition for reinstatement can be initiated at any time, and the student may be reinstated 10 school days after the expulsion.

## Grade 6 or above

For a student who was enrolled in grade 6 or above at the time of the expulsion and who has been expelled pursuant to subsection (2), the parent, legal guardian, or the student (if he or she is at least 18 years of age or an emancipated minor), may initiate a petition any time after 150 school days following the date of expulsion. A student may be reinstated 180 school days following the date of expulsion.

## Committee Review and Recommendation

Within 10 school days after receiving a petition for reinstatement, the school board must appoint a committee comprised of two school board members, one school administrator, one teacher, and one parent of a student in the school district to review the petition and any supporting information submitted by the petitioner. During this time, the superintendent may prepare and submit information concerning the circumstances of the expulsion and any factors weighing in favor of or against reinstatement.

Not later than 10 school days after being appointed, the committee must review the petition and supporting information together with information provided by the school district and submit a recommendation to the school board. The committee may recommend unconditional reinstatement, conditional reinstatement, or against reinstatement. The recommendation must be accompanied by an explanation of the reasons for the recommendation. If the recommendation is for conditional reinstatement, it must include any recommended conditions.

The committee's recommendation must be based on all of the following factors:

- (1) The extent to which reinstatement of the student would create a risk of harm to pupils or school personnel.
- (2) The extent to which reinstatement would create a risk of school district or individual liability for the school board or school district personnel.



# MDE Recommends

- (3) The age and maturity of the individual.
- (4) The student's school record before the incident that caused the expulsion.
- (5) The student's attitude concerning the incident that caused the expulsion.
- (6) The student's behavior since the expulsion and the prospects for remediation.
- (7) If the petition was filed by a parent or legal guardian, the degree of cooperation and support that has been provided by, and that can be expected from, that person if the student is reinstated, including, but not limited to, receptiveness toward possible conditions placed on the reinstatement.

## School Board Decision

After receiving the committee's recommendation, the school board must make a decision no later than the next regularly-scheduled board meeting. The school board must decide either to reinstate the student, conditionally reinstate the student, or deny reinstatement.

Before conditionally reinstating the student, a school board may require a student and the parent or legal guardian to agree in writing to specific conditions. The conditions may include, but are not limited to, the following:

- (1) Agreement to a behavior contract which may involve the student, parent or legal guardian, and an outside agency;
- (2) Participation in, or completion of, an anger management program or other appropriate counseling;
- (3) Periodic progress reviews; and
- (4) Specified immediate consequences for failure to abide by a condition.

The law provides that the decision of the school board is final.

**The Michigan Compiled Laws are accessible on the Internet at:**

**<http://michiganlegislature.org>**